HON'BLE SHRI JUSTICE NOOTY RAMAMOHANA RAO

W.P. No.12432 of 1998

25.6.2007

Between

The Depot Manager, A.P.S.R.T.C., Thiruvur, Krishna District and another ..Petitioner

AND

Kothapalli Lalitha Kumari and others ..Respondents

:: JUDGMENT ::

HON'BLE SHRI JUSTICE NOOTY RAMAMOHANA RAO

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W.P. No.12432 of 1998

This writ petition has been preferred by the management of the A.P.S.R.T.C. questioning the correctness and validity of the Award passed on 25.11.1997 by the Labour Court, Guntur in I.D.No.279 of 1996. The A.P.S.R.T.C. has employed one K.Yesudas as a Driver with it, who joined the service of the Corporation in the year 1982. During March, 1994, Yesudas seems to have developed pain in his knees and legs and consequently, he proceeded to Madras for receiving treatment. Prior thereto, he had availed 'special off' on 13.3.1994 and 14.3.1994. But however, in view of his sickness, he sent a telegraphic communication from Madras on 15.3.1994. He appears to have reported to duty on 17.3.1994 and again, he had proceeded to Madras due to his failing health. On his reporting back to duty on 14.4.1994 together with the certificate of fitness, the A.P.S.R.T.C. had subjected him to disciplinary proceedings. Following is the gist of the three charges that were laid against the said Yesudas:

1. For having absented for your duties with effect from 21.3.1994, unauthorizedly without prior permission or extension of sick leave from competent authority;
2. For having failed to produce, the sick certificate for the period from 15.3.1994 to 20.3.1994 within 48 hours.
3. For having left the head quarters without obtaining prior permission of the superior, which

constitutes a misconduct as per rules and regulations of the respondents.

By an order passed on 31.12.1994 based upon the findings of the Enquiry Officer that the charges are proved, he had been removed from service of the Corporation. It is further alleged that the said Yesudas died on 19.10.1995. His legal representatives have raised the Industrial Dispute questioning the correctness of the punishment imposed against Yesudas. It is this Dispute, which came to be adjudicated by the Labour Court on 25.11.1996.

The Labour Court had come to the conclusion that the A.P.S.R.T.C. has not disputed the correctness and genuineness of the certificates of sickness produced by the said K.Yesudas having obtained the same at Madras. But however what has been disputed is those certificates have not been produced within 48 hours of his sickness. This apart, the Labour Court had also considered the fact that Yesudas was working as a Driver for nearly 12 years in the Corporation and therefore, his proceeding to Madras for receiving the treatment ought not have been faulted when his sickness or the certificates produced to vouchsafe the same have not been disputed. It had therefore arrived at a conclusion that the punishment of removal which has been imposed against Yesudas was too disproportionate and a harsh punishment even going by the extent of misconduct alleged against Yesudas being proved. But however, noticing the fact that Yesudas was not alive for enabling his reinstatement back into service, the Labour Court felt ordering for payment of compensation for a period of two years in lieu of reinstatement will be an appropriate measure of compensating

the claim.

The learned Sanding Counsel for the A.P.S.R.T.C. would contend that the Labour Court was not justified in passing the Award comprising of an element of compensation and at the same time ordering the Corporation to consider appointment of any of the dependants of the deceased Yesudas on compassionate grounds.

The learned Standing Counsel would urge that the Labour Court had not found fault either with the procedure adopted or with the findings recorded by the Enquiry Officer and therefore, its substitution of punishment on the ground that it is too excessive or harsh is clearly unsustainable.

Appearing for the respondent-- Claimants,

Sri P.A.Seshu representing Sri P.V.Rama Sharma would contend that the exercise of discretion carried out by the Labour Court is very fair and reasonable. In fact, had Yesudas been alive, the Labour Court would have found no hesitation to order for his reinstatement with full back wages as the proven misconduct against Yesudas is too negligible. The learned counsel tried to justify the conclusion of the Labour Court that the claims of the dependants be considered on compassionate grounds for employment, as such a scheme was available with the Corporation. But however, the claimants seemed to have reconsidered their own stand and they filed a memorandum signed by one K.Lalitha Kumari, wife of the deceased Yesudas stating that they are not pressing that portion of the claim where they solicited consideration of providing for employment to one of the dependants of Yesudas by the petitioner Corporation. Therefore, Sri Seshu would contend that when the claimants

have given up that portion of their claim, the Corporation cannot feel aggrieved by the Award passed insofar as it ordered for payment of compensation in lieu of reinstatement.

When once the Labour Court had found that the Corporation has not disputed the correctness of the claim of Yesudas that due to his sickness and ill health, he had proceeded to Madras for receiving the necessary treatment, the only aspect the Corporation could say against him was that he had produced the certificate of sickness beyond the time limit. Therefore, it is manifestly clear that the Corporation is not in a position to dispute the genuineness of the claim of Yesudas that because of his sickness, he had proceeded to Madras and received the treatment thereat. Therefore, strictly speaking, it cannot be said that the said Yesudas was unauthorisedly absent from the duties. His absence from duty was perhaps due to sickness and several factors beyond his control. This apart, in case of medical advice to receive better treatment at a different and far off place, proceeding to a place like Madras which is not the headquarters of Yesudas, cannot be faulted at all. While the Conduct Rules undoubtedly prescribe that employees before leaving headquarters must seek prior permission of the competent authority, but such regulations have got to be necessarily considered and understood as to be holding the field and become applicable in all other normal circumstances. When a medical emergency arises or for the purpose of receiving better medical treatment if one had left the headquarters to go over to another distant place, the element of misconduct is missing therein. In such a case, the conduct on the part of the employee concerned is fuelled by a compulsion

to receive better medical attention at a place otherwise than at the headquarters. Therefore, it does not become a misconduct and to that extent, perhaps the findings recorded by the Enquiry Officer which in turn form the basis for the order of removal passed on 31.12.1994, cannot be sustained. Even otherwise as a whole, the quantum of misconduct alleged and proved against the deceased Yesudas was too marginal and negligible warranting imposition of the punishment of removal from service, particularly viewed from the angle of his nearly 12 years of blemish less service. Therefore, I do not find any illegality in the exercise of discretion vested with the Labour Court under Section 11 A of the Industrial disputes Act carried out by it in the impugned Award.

But however, in view of the memo filed by the claimants in this writ petition today giving up that portion of their claim for consideration of the candidature of one of the dependants for employment, that portion of the Award under challenge which ordered the Corporation to consider the case of one of the dependants of Yesudas for employment with the Corporation, can be set aside. It is needless to observe that by ordering for payment of compensation of salary and allowances for a period of two years, the Labour Court had in effect set aside the order of removal dated 31.12.1994 passed against Yesudas. Therefore, till the date of his death, he would be notionally treated to have continued in service. It is further needless to observe that all other terminal benefits which the claimants-dependants would be entitled to receive if only Yesudas had continued in service till 19.10.1995, are liable to be paid to them.

However, the Standing Counsel for the Corporation prays for time to pay the compensation as was ordered by the Labour Court. Therefore, time is granted upto 31.7.1987 for payment of compensation amount as ordered by the Labour Court. If any amounts in the form of terminal benefits are due to be paid, the respondents will submit appropriate representation to the Corporation which will be settled within a period of two months from the date of its receipt.

With this, the writ petition stands dismissed. No costs.

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NOOTY RAMAMOHANA RAO.J.

25.6.2007
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